

REPRESENTATIVES FOR PETITIONER: William & Martha Pottorff, pro se
REPRESENTATIVES FOR RESPONDENT: Marilyn Meighen, Attorney
Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

William & Martha Pottorff,)	Petition No.: 55-004-14-1-5-10198-15
)	
Petitioner,)	Parcel No.: 55-09-29-175-005.000-014
)	
v.)	County: Morgan
)	
Morgan County Assessor,)	Assessment Year: 2014
)	
Respondent.)	

Appeal from the Final Determination of the
Morgan County Property Tax Assessment Board of Appeals

February 28, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues now finds and concludes the following:

I. Introduction

1. The Morgan County Assessor seeks to increase William and Martha Pottorffs’ assessment based on an appraisal the Pottorffs did little to impeach or rebut. The Pottorffs instead focused mainly on perceived problems with the assessment and appeal process below, which is largely irrelevant given that we hear appeals de novo. We therefore determine that the assessment should be increased in accordance with the appraisal.

II. Procedural History

2. The Pottorffs contest the 2014 assessment on their single-family residence located at 1220 South Shore Drive in Martinsville. On April 6, 2015, the Morgan County Property Tax Assessment Board of Appeals (“PTABOA”) entered its determination reducing the assessment to the following values:

Land	Improvements	Total
\$18,200	\$184,400	\$202,600

3. The Pottorffs appealed this decision by timely filing a Form 131 petition in which they elected to have the matter heard under our small claims procedures. We later granted the Assessor’s request to transfer the appeal to our standard hearing procedures. We also granted the Assessor’s request for entry upon land and ordered the Pottorffs to allow both the Assessor and her appraiser to inspect the home.
4. After several attempts to schedule a hearing and multiple continuance requests, our designated administrative law judge, Kyle C. Fletcher (“ALJ”), held a telephonic conference at which the parties agreed to have the appeal decided on written submissions. The ALJ then issued an order directing the parties to submit all their evidence by October 24, 2018. He further ordered that the parties had to present any testimony through sworn affidavits. He allowed the parties to file briefs discussing the evidentiary submissions by October 24. The parties timely filed their evidentiary exhibits and briefs. Neither the Board nor the ALJ inspected the property.
5. The parties submitted the following exhibits:¹

- Petitioners Exhibit 1: Affidavit of William & Martha Pottorff
- Petitioners Exhibit 2: Table labeled 1280 South Shore
- Petitioners Exhibit 3: Unlined table labeled LE tax info for Pottorff 3-23-2015
- Petitioners Exhibit 4: Lined table labeled LE tax info for Pottorff 3-23-2015
- Petitioners Exhibit 5: Property Assessment Detail Report for 1085 Locust Dr.

¹ The Pottorffs submitted a single group of documents for both this appeal and a separate appeal for a different property (Pet. no. 55-004-14-1-5-10199-15). They did not label any of the documents as exhibits. We have included those documents in both appeals, assigned them exhibit numbers, and labeled them accordingly.

- Petitioners Exhibit 6: Property detail and history reports and property report card (“PRC”) for 1085 Locust Dr.
- Petitioners Exhibit 7: October 3, 2018 letter from Maureen Rohr
- Petitioners Exhibit 8: Market value estimate and bill from Jean Shewmaker
- Petitioners Exhibit 9: Property history and detail reports for 3656 S. Whippoorwill Lake Dr.
- Petitioners Exhibit 10: Plat of survey for Carl Rohr
- Petitioners Exhibit 11: Land Sciences record of survey, page 1
- Petitioners Exhibit 12: Sketch from Dianna Grindean’s appraisal of 1280 South Shore Drive
- Petitioners Exhibit 13: Outside measurements of 1280 South Shore Dr.
- Petitioners Exhibit 14: Blueprint for Mr. and Mrs. Carl Rohr residence
- Petitioners Exhibit 15: Morgan County Assessor form, partially completed by Steve Dunbar
- Petitioners Exhibit 16: Excerpts from 2018-2019 Uniform Standards of Professional Appraisal Practice
- Petitioners Exhibit 17: Two tables labeled Newest Appraisal 5-2-18 and LE tax info for Pottorff 3-23-2015
- Petitioners Exhibit 18: Form 11R/A for 1280 South Shore Dr., Form 11 for 1280 South Shore Dr., and 2 Form 11s for 1290 South Shore Dr., years 2015 and 2017
- Petitioners Exhibit 19: 2017 Form 11 for 1290 South Shore Dr.
- Petitioners Exhibit 20: 2013-2015 PRCs for 1220 South Shore Dr.

- Respondent Exhibit A: PRC for the subject property
- Respondent Exhibit B: Dianna Grindean affidavit
- Respondent Exhibit B1: Certified residential appraiser license
- Respondent Exhibit B2: Appraisal report for 1220 South Shore Drive by Dianna Grindean

6. The record also includes (1) all petitions, motions, briefs, and other documents filed in these appeals, and (2) all orders and notices issued by the Board or our ALJ.

III. Summary of Contentions

A. The Assessor

7. The Assessor submitted an appraisal from Dianna Grindean, an Indiana certified residential appraiser. Grindean certified that she performed her appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). She developed the sales-comparison and the cost approaches to value the subject property, giving the most weight to her conclusions under the sales-comparison approach. Because

of a lack of rental data, she did not develop the income capitalization approach. *Resp't Exs. B-B2.*

8. The property is located in the Lake Edgewood 3rd subdivision, which Grindean described as a desirable and popular community with a stable market for lakefront properties. She characterized the lot as one of the best lakefront lots in the neighborhood because it has water on three sides. *Resp't Exs. B, B2.*
9. Grindean inspected the site as well as the home's interior and exterior. She also measured the home. She found that the home was built with average quality materials and workmanship and was generally well maintained. According to Grindean, the home had undergone renovations following a flood in 2008. It lacked floor coverings. Some bathroom fixtures had not been replaced. And the kitchen had not been "put back in." *Resp't Exs. B, B2.*
10. Grindean began her analysis under the cost approach by valuing the site. Because the Pottorffs' subdivision had been built-up for many years, she looked to sales of vacant parcels from the same general market segment and estimated a site value of \$60,000. She used the Marshall & Swift residential cost guide to determine a replacement cost for the improvements, and she estimated depreciation using an economic life of 50 years for the home. After adding the land value to the depreciated cost of the improvements, Grindean arrived at a value of \$308,603. *Resp't Exs. B, B2.*
11. Turning to the sales-comparison approach, Grindean initially found a limited pool of comparable sales. After expanding her search, she selected what she considered the most recent sales in the subject property's general market segment with similar appeal, function, and design as the subject property. All of Grindean's comparable sales were located in Martinsville, less than five miles from the subject property. They sold for prices ranging from \$235,000 to \$297,000. *Resp't Exs. B, B2.*
12. Grindean then adjusted the sale prices to account for relevant ways in which the sold properties differed from the subject property, such as differences in building veneer and

above-grade living area, basement area and finish, view, and lot size. She also adjusted for differences in amenities like porches, patios, decks, and fireplaces. And she adjusted each sale price downward by 13% to account for the fact that the ongoing renovation from the flood was not complete. That last adjustment pushed her average gross adjustment per property over 28%. While that is higher than is typical, Grindean believed her approach was the best way to address the home's lack of finish. *Resp't Exs. B, B2.*

13. Grindean's adjusted sale prices ranged from \$206,340 to \$266,450. She settled on an indicated value of \$225,000 under the sales-comparison approach, which was also her reconciled value after considering her conclusions under both approaches. *Resp't Exs. B, B2.*
14. Grindean initially valued the property as of November 12, 2015. At the Assessor's request, Grindean later examined sales data from January 1, 2012 to February 28, 2014, and added a sale (comparable 6) from August 2012 to her report. But she did not change the report's effective date. After reviewing the additional data, she found that property values were relatively flat throughout the period from January 1, 2012 to November 12, 2015, and began increasing in 2016. She believed the indicated amount from her original valuation was still reliable throughout that period. In an affidavit, Grindean affirmed that she amended her appraisal to estimate the property's value as of March 1, 2013. The Assessor characterizes that statement as a typo and claims Grindean actually valued the property as of March 1, 2014. *Resp't Exs. B, B1; Ass'r Brief.*
15. Although the Pottorffs offered an assessment history for the subject property and assessment information for several other properties, the Assessor argues that such information, by itself, does not show the subject property's market value-in-use for the year under appeal. Each tax year stands alone and the value of the subject property in previous years does not show its value for later years. Because the Pottorffs did not attempt to analyze any of the information they offered for other properties or explain how that information related to subject property's value, the Assessor argues that they failed to meet their duty of walking us through their evidence. *Resp't Brief.*

B. The Pottorffs

16. The Pottorffs argue that Grindean's appraisal is inaccurate. In their unsworn brief, they claim that the property never flooded. They filed paperwork with the Federal Emergency Management and Small Business Administration after having been instructed to do so. When they discovered roof damage, the Pottorffs replaced their roof and notified the Assessor, who increased their property taxes. In 2008 and 2009, the subject property was valued at only \$185,800. In addition, contrary to what Grindean says in her appraisal, the Pottorffs claim that Lake Edgewood has never had a homeowners' association. *Pet'rs Brief*.
17. The Pottorffs also claim that Grindean inaccurately reported the distances between the subject property and her comparable sales. In their unsworn brief, the Pottorffs allege that they used Google Maps to measure the shortest distances between the properties, which were much greater than Grindean reported. *Pet'rs Brief*.
18. In other unsworn statements, the Pottorffs allege that the Assessor, her counsel, Marilyn Meighen, and Grindean acted in a biased and unethical manner. First, Meighen failed to announce herself as an attorney during an informal meeting between the Pottorffs and the Assessor. Second, Meighen misunderstood the Pottorffs' attempt at settlement, which would have corrected all of the errors in their assessment without the expense of court proceedings. Third, Grindean previously offered a value opinion for 1280 South Shore Drive, a property the Pottorffs have separately appealed.² Fourth, Grindean took photographs inside the home without the Pottorffs' knowledge. Finally, one of the PTABOA members at the Pottorffs' hearing was the Assessor's daughter. *Pet'rs Brief*.
19. According to the Pottorffs, the property should be assessed at \$183,500. They claim the Assessor increased property values to meet the demands of the "Conservancy Board Budget." Lake Edgewood property owners have no ownership interest in the areas

² Grindean acknowledges that she previously appraised 1280 Lake Shore Drive. *Resp't Ex. B*.

covered by the conservancy. They pay to use the water, with each individual property governed by a “Dedication Certificate.” *Pet’rs Brief*.

IV. Conclusions of Law

A. Burden of Proof

20. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor under certain circumstances, including where (1) the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property, or (2) the taxpayer successfully appealed the prior year’s assessment, and the current assessment represents an increase over what was determined in the appeal. *See* I.C. § 6-1.1-15- 17.2(a)-(b), (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year’s level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
21. The Pottorffs’ assessment increased by more than 5%, going from \$183,500 in 2013 up to \$202,600 in 2015. The Assessor, however, argues that the Pottorffs are seeking an equalization adjustment and that the burden-shifting statute does not apply to such claims. *Ass’r Brief* (citing *Thorsness v. Porter Cnty. Ass’r*, 3 N.E. 3d 49 (Ind. Tax Ct. 2014)). We disagree. It is unclear whether the Pottorffs seek an equalization adjustment. Even if they do, they also claim that the PTABOA erred in valuing their property. The Assessor therefore has the burden of proving the assessment is correct.

B. The Assessor proved that the subject property’s market value-in-use was \$225,000

22. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
23. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally accepted appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (reiterating that a USPAP-compliant market value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct).
24. Regardless of the method used, a party must explain how her evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2014 assessments, the valuation date was March 1, 2014. I.C. § 6-1.1-4-4.5(f); I.C. § 6-1.1-2-1.5.
25. The Assessor offered Grindean’s USPAP-compliant appraisal valuing the property at \$225,000. We find Grindean’s appraisal generally credible. She developed two generally accepted valuation approaches, ultimately relying on her conclusions under the sales-comparison approach. And she explained why she believed her data was appropriate, including why and how she adjusted the sale prices for her comparable properties.

26. We are a little concerned by the fact that Grindean did not expressly value the property as of the relevant March 1, 2014 valuation date. But she explained, without contradiction, that her estimated value was reliable for a period encompassing that date. We therefore find that her appraisal is probative of the property's true tax value.
27. The Pottorffs did little to impeach or rebut Grindean's appraisal. In unsworn and otherwise unsupported statements from their brief, they allege that Grindean incorrectly reported that their subdivision had a homeowners' association and that their home had previously flooded. They also allege that Grindean underestimated the distances between her comparable sales and subject property. Even if the Pottorffs had offered probative evidence to show Grindean made those factual errors, it is not apparent how those errors would have affected her valuation opinion, if at all.
28. The Pottorffs offered no probative valuation evidence of their own. At most, they offered exhibits with some information about the assessment histories of the subject property and other properties. As for the subject property's assessment history, the Assessor correctly points out that each assessment year stands alone and that evidence of a property's assessment in one year does not necessarily show its true tax value in later years. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).
29. The exhibits do reference assessments for other properties and contain some basic information about those properties. But raw data for other properties does nothing to show the subject property's value. The Pottorffs needed to apply generally accepted appraisal principles to show how those properties compared to their property and how relevant differences affected value. *See, e.g., Long*, 821 N.E.2d at 471-72 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value); *Indianapolis Racquet Club, Inc. v. Marion Cnty. Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014) (rejecting claim based on assessments of other properties because the

taxpayer failed to explain how those properties compared to its property or to account for distinguishing characteristics that would affect values).

30. While the Pottorffs make several mostly unsupported allegations about what they believe was unethical conduct by the Assessor, her attorney, and a PTABOA member in the proceedings below, they fail to explain why those allegations are relevant to the central question in this appeal—the subject property’s true tax value. Our proceedings are de novo, are there are no allegations of unfairness regarding the appeal process before us.

C. The Pottorffs failed to prove they were entitled to an equalization adjustment

31. Finally, to the extent the Pottorffs claim an equalization adjustment, they have the burden of proof. *Thorsness*, 3 N.E.3d at 52-53. An equalization adjustment is a remedy for the lack of uniformity and equality in assessments. It seeks to adjust a property’s assessment so that it bears the same relationship of assessed value to true tax value as other properties within the same jurisdiction. *See id.* at 51-52. The Pottorffs, however, did not show the true tax value of the subject property or any of the other properties. They therefore failed to meet their burden of proof. *See Westfield Golf Practice Cntr., LLC v. Washington Twp. Ass’r*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (finding that taxpayer failed to prove a lack of uniformity and equality where it failed to show the actual market value in-use for its property or any of the properties it claimed were more favorably assessed).

V. CONCLUSION

32. Based on Grindean's appraisal, we find that the subject property's true tax value is \$225,000 and that its 2014 assessment should be changed accordingly.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.